

time” are expressly barred by the agreement between the parties. In addition, Liberty Bay’s “lost profits” damages theory is invalid under New York law, as such damages were not contemplated by the parties at the time of contracting and are in no way causally connected to Open Solutions’ alleged breach. Finally, the undisputed evidence in this case demonstrates that both of these theories of damages are entirely speculative and unable to be calculated with any reasonable certainty.

WHEREFORE, for the foregoing reasons, as well as those set forth in the accompanying Memorandum, affidavits and exhibits submitted in support of this Motion, Open Solutions respectfully requests that this Court grant this Motion for Partial Summary Judgment and enter an Order barring Liberty Bay from seeking damages for its supposed “lost profits” or its “lost employee time.”

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), undersigned Defendant and Counterclaimant Open Solutions Inc. respectfully requests oral argument on this Motion on the grounds that such argument may assist the Court in ruling on the issues presented by this Motion.

Respectfully submitted,

DATED: September 27, 2012

By /s/ Daniel J. Cloherty
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CERTIFICATION OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

The undersigned counsel hereby certifies that he has conferred with Plaintiff's counsel and attempted in good faith to resolve or narrow the issues raised in this motion.

/s/ Daniel J. Cloherty

Dated: September 27, 2012

CERTIFICATION OF SERVICE

I, Daniel J. Cloherty, hereby certify that a true and correct copy of the foregoing document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 27, 2012.

/s/ Daniel J. Cloherty